

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
EASTERN DIVISION

RONALD E. WALKER,  
Petitioner,  
v.  
R. DIAZ, WARDEN,  
Respondent.

Case No. EDCV 12-1184-DSF (MLG)

ORDER DENYING MOTION AND  
DISMISSING ACTION WITHOUT  
PREJUDICE

Ronald E. Walker, a California state prisoner, has filed a document with the Court requesting a 60-day extension of time in which to file a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. He does not provide any information concerning the underlying state conviction or any claims for relief. Rather, he only states that due to his attorney's misconduct and subsequent death, he was unable to file a habeas corpus petition on time. It appears that Walker is seeking to suspend the running of the one-year limitations period set forth in 28 U.S.C. § 2244(d) for the filing of a habeas corpus petition. For the reasons stated below, the motion is denied and this matter is dismissed without prejudice.

//

1       The Constitution's "case or controversy" jurisdictional  
2 requirement precludes the granting of relief like that requested by  
3 Petitioner, because there are no adverse parties before the Court and  
4 there is no concrete dispute for this Court to decide. *See Valley*  
5 *Forge Christian Coll. v. Americans United for Separation of Church*  
6 *and State, Inc.*, 454 U.S. 464, 471 (1982); *Woodford v. Garceau*, 538  
7 U.S. 202, 207-08, 123 S.Ct. 1398, 155 L.Ed.2d 363 (2003) (just as  
8 civil actions in general begin with the filing of a complaint, a  
9 habeas action begins with the filing of an application for habeas  
10 corpus relief), *Bjorn v. Warden*, 2009 WL 1392089 (N.D. Cal. 2009) (In  
11 absence of concrete dispute, federal court cannot grant extension of  
12 time to file habeas corpus petition); *Chairez v. Adams*, 2007 WL  
13 1703750 (N.D. Cal. 2007) ("In the absence of an actual petition for  
14 a writ of habeas corpus or other civil complaint, there is no case  
15 or controversy for this Court to adjudicate."); *In re Brockett*, 2006  
16 WL 1329675 (N.D. Cal. 2006); *see also United States v. Leon*, 203 F.3d  
17 162, 164 (2d Cir. 2000) (holding that a federal court lacks  
18 jurisdiction to consider the timeliness of a § 2255 petition until  
19 a petition actually is filed); *United States v. Clarke*, 1998 WL  
20 91069, at \*1 (D. Conn. 1998) (denying request for extension of  
21 limitations period to file § 2255 motion).

22       Petitioner must file a habeas corpus petition in this Court  
23 before the Court may act upon either his substantive claims or on any  
24 claim that he might be entitled to either statutory or equitable  
25 tolling of the limitations period. The Court simply does not have  
26 jurisdiction to extend the time for filing or give an advisory  
27 opinion as to the timeliness of a petition.

28 //


1 For the foregoing reason, the motion is DENIED and this action  
2 is dismissed without prejudice.

3  
4 Dated: 8/6/12

5   
6

7  
8 Dale S. Fischer  
United States District Judge

9 Presented By:

10   
11  
12 Marc L. Goldman  
13 United States Magistrate Judge  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28